

C.A.N. Canadian ACEDS Newsletter



Toronto

Spring 2022

Second Edition



Vancouver

ACEDS is a global association serving the legal professional community, creating a space for collaboration, exchange of ideas and offering professional development opportunities. As of 2020, the ACEDS community has expanded into Canada with two chapters!

MESSAGE FROM THE CHAPTERS

Snowdrops are perennial winter plants that, in my Toronto neighborhood, push up through the snow once the weather turns. In March, snowdrops are the first flowers to bloom in my garden. I like them because they require little maintenance – I leave them alone, and each year at some point, their small delicate flowers peek through the snow that remains, symbolizing hope and change. Hope for the coming warm and long sunny days and change for the impending melt and Spring.

While this year's snowdrops arrived around the same time as last year's, this year felt different. Different because we are hopefully pushing through to the other side of the pandemic and slowly getting back to enjoying in-person events and spending time with friends and family.

A lot has happened since our last newsletter! I want to highlight the release of the first annual [Canadian eDiscovery Salary Survey](#), published in April. We have received positive feedback on the report and plan to hold the survey annually. If you have not had a chance to review the report, please check it out and let us know your thoughts!

Stay tuned to your inbox for information on our virtual spring event, where we will explore the survey results in greater detail.

The ACEDS Canadian chapters have had much success over the last year, and we want to continue to grow! If you have not already associated yourself with one of the Canadian chapters, please take a moment to sign in to your ACEDS account and select Toronto or Vancouver as your chapter (whichever one is closer)! We want information to reach you so that you are included in our chapter events and have the opportunity to get involved.

If you are not yet an ACEDS member, why not take this opportunity to join our growing community and commit to furthering your ediscovery knowledge while making new and meaningful connections along the way? Spring is a time of change and growth and I challenge you join our community!

Carolyn Anger, President, ACEDS Toronto



ACEDS

ASSOCIATION OF CERTIFIED
E-DISCOVERY SPECIALISTS

Toronto / Vancouver Canadian Chapters

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- Veronica MacInnis, *Stikeman Elliott*
- Stephanie Mills, *Cassels*
- Anna Traer, *Rogers Communications Canada Inc.*
- Chris Walker, *KPMG*

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ACEDS Toronto Chapter

Formed in February 2020, the Toronto Chapter was the first Canadian Chapter to join ACEDS. In just over 2 years, the Chapter has built a solid membership base and continues to explore new ways to interact with the community.

UPCOMING EVENTS

 **May 17, 2022 - ACEDS Canada Survey Review**

 **June 2022 - Deep Dive Discussion into the Realm of "Intelligence"**

 **September 2022 - Emoji's in the Workplace: What You Need to Know**

 **October 2022 - The Intersection of Cybersecurity & eDiscovery (Two Part Series)**

 **December 2022 - 2022 Year in Review: Caselaw and developments in the world of eDiscovery**

 **December 3, 2022 - eDiscovery Day!**

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ACEDS Vancouver Chapter

Formed in August 2020, the ACEDS Vancouver Chapter was the second Canadian chapter to join ACEDS to enhance the E-Discovery community in Vancouver and beyond through various education and networking opportunities.

UPCOMING EVENTS



May 17, 2022 - ACEDS Canada Survey Review



May 2022 - eDiscovery in Post-Covid World



June 2022 - In Person Social!



October 2022 - Regulatory Investigations



December 3, 2022 - eDiscovery Day

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Discovering the Metaverse: What's next for e-discovery?

by Rachael Chadwick (Cassels) and Chris Walker (KPMG)



It's a new world – the metaverse – a virtual place that is hard to define and, for some of us, even harder to understand. Even the word 'meta' has different meaning to different people. Meta, as in metaphysics, refers to the dimension of the 'other', or 'beyond' physics. In metabolism and metamorphosis, the prefix 'meta' means to 'change'. And a metaphor refers to one thing, while mentioning something else. To e-discovery practitioners, 'metadata' is commonly defined as 'data about the data', in this case the 'meta' meaning 'self-referential' or relating to itself.

For many people, the term 'metaverse' was not apart of our vocabulary until Facebook announced it's rebranding to Meta in the fall of 2021. Since then, the metaverse seems to appear in the news daily – the first metaverse wedding, the first metaverse concert, the first metaverse bank, the first metaverse lawyer, and the first real estate transaction.

The concept of a metaverse has been around for a while, often traced back to the 1992 sci-fi dystopian novel 'Snow Crash' that took place in a virtual reality dataspace. Since the World Wide Web was invented, the gaming world (Roblox, Pokemon Go, Fortnite and others) has pushed the virtual envelope by continuously redefining boundaries related to how users interact across the globe.

The metaverse allows people to connect with anyone, anywhere, without limitation. It takes the Internet to the next level, allowing users to participate in a parallel, if not improved, level of connecting – being fully immersed in a virtual, digital world.

It is an online space where people can virtually interact and replicate aspects of their daily life – socialize, conduct business, congregate and even go shopping – all through virtual avatars. No one company or entity 'owns' the metaverse, but many technology companies are investing significantly in the concept of the metaverse, suggesting that it is the next generation of computing.

The future of the metaverse is still unclear, sparking conversations regarding ownership, jurisdiction, NTF's ('non-fungible tokens', a unit of ownership that uses blockchain technology) and cybersecurity to name a few. Along with this new territory, legal implications are being flagged.

Privacy and cybersecurity

Issues of data security and privacy related to safeguarding user identity, become more complex in a metaverse. As new technologies are created and become interwoven, there is little doubt that digital information will become vulnerable to hacking through social engineering and phishing. The fact that the metaverse requires the use of virtual reality or augmented reality technology, along with NFT's or digital wallets, and personal or biometric information makes it highly susceptible to cyberattacks and fraud. While blockchain technology may be largely secure, there may be vulnerabilities that will appear as more users, and fraudsters, enter the space.

The idea of avatars raises further issues such as cyberstalking, bullying and underage pornography.



Moreover, the question of whether an avatar can be liable, allowing them to be sued or to sue, along with the issue of ethics, standards, laws and jurisdictions, and whether real people can or should be responsible for the behaviour of their avatar, may be an issue.

Intellectual property

Name brand labels, especially sport labels (i.e., Adidas, Nike, etc.) and luxury fashion (i.e., Burberry, Dolce & Gabbana and Gucci), are already vying for the virtual marketplace. There already exists virtual influencers, similar to social media influencers, that promote and sell digital clothing and accessories for avatars. The potential for virtual counterfeits and trademark disputes has sparked new applications for companies to file for trademark protection of their logos and designs to include the use in a virtual environment.

The issues of intellectual property related to the metaverse does not stop at fashion. It will extend to software, devices, interactive tools, metaverse land, and likely many more aspects that have yet to be considered. NFT's are, in itself, a digital item that will likely become property vulnerable for dispute.

Real estate, avatars and art

The concept of ownership in the metaverse, whether it be art, an avatar, real estate or name-brand running shoes, is complicated. There is one school of thought which believes that the platform on which a digital item is created or purchased (i.e., the platform that holds the data) is the owner, since the item

may be limited to that specific platform or to a specific metaverse. On the other hand, if an item is available on multiple platforms or multiple metaverses, then the concept of ownership might align better with the person who created or controls the item.

Since Facebook announced its name change to Meta, real estate sales in the metaverse have surged dramatically. There are a number of metaverse real estate platforms where one can purchase land, islands, houses...along with an endless possibility for attractions, advertising, events and retail shops. As an example, Snoop Dogg created "Snoopverse", a universe in the metaverse where he is working to build a virtual replica of his actual California mansion that will house his NFT collection for others to visit and view (think of a digital museum).

Real estate transactions in the metaverse are based on digital coding rather than traditional legal descriptions. As a result, issues of ownership and smart contracts (using blockchain technology) are likely to appear as ownership may be confused with service agreements or licences.



What does this mean for e-discovery practitioners?

Many e-discovery practitioners already see the potential implications and impact of the metaverse on their practice. The idea of a metaverse opens up an entirely new world of challenges of how evidence is identified, preserved, collected, reviewed and presented.



- **Custodians**

One of the first steps in e-discovery is identifying the custodians – the owners – of potentially relevant data. How challenging will it be to identify the custodian of the avatar, art, or name-brand knock-offs?

- **Jurisdiction**

Is the metaverse a jurisdiction, and why would it be important in the context of e-discovery? Currently, there is no clear understanding of boundaries or jurisdiction in the metaverse and, as a result, laws and regulations related to privacy and data ownership are unclear. Much like the challenges associated with existing social media platforms, data contained in the metaverse may reside in multiple jurisdictions around the world, resulting in confusion and complexities when it comes time to preserve, collect and export data.



- **Data Types and Sources**

The metaverse will introduce new data types and sources for e-discovery practitioners – consider the possibility of avatars, digital twins and 3D models – that will increase the already voluminous data types faced by e-discovery practitioners on a daily basis.

Exacerbating this issue could be the development of multiple, separate metaverses, each with their own proprietary data types and data sources. Add in the challenge that the majority of the new and emerging data sources associated with the metaverse are unstructured and unsearchable, and it quickly becomes apparent that the metaverse could turn the e-discovery landscape on its head.

- **e-Discovery Tools**

e-Discovery tools have commonly lagged behind emerging technologies. As an example, during the global pandemic, e-discovery practitioners have struggled to collect, process, analyze and review data stored in collaborative software applications such as Slack and Microsoft Teams. Similarly, everyday activities such as instant messaging and the use of emojis continue to pose challenges for modern e-discovery tools. As our understanding of the metaverse develops, e-discovery tools, practitioners and processes, will need to stay abreast and adjust to new and emerging data sources.

- **Information Governance**

Policies and processes related to the use, transfer, protection and retention of data, will require updating as we enter this new world, especially for organizations that do business in metaverse. Organizations will need to keep in mind that the metaverse is not limited to transactional or social purposes, and create policies to guide how employees use the metaverse for business communications.

Looking forward – a blend of trends

As e-discovery practitioners, we love to look at trends – looking back over the past two years during a global pandemic and the critical move to remote working, one of the big e-discovery trends was the issue of collaborative software. Looking forward, the metaverse presents new challenges for e-discovery practitioners and will further amplify the trend in which the worlds of information governance, e-discovery, cybersecurity and privacy are aligning into a single discipline.



Rachael Chadwick is the Director of Discovery Services at Cassels LLP and has more than two decades of experience in managing and advising on complex discovery matters. Rachael brings her knowledge and leadership qualities to provide strategic discovery solutions for litigation matters, and is responsible for implementing best practices while helping the firm leverage the most effective technology and techniques to provide cost effective and proportionate solutions. Rachael is dedicated to the e-discovery community at-large, currently serving as Director of Women in e-Discovery (Toronto Chapter) and as Vice-Chair of the Ontario Digital Evidence and e-Discovery Working Group. She was recognized as Who's Who Legal: Canada for e-discovery in 2021.



Chris Walker is a Senior Manager in KPMG's Forensic Technology practice with over 15 years of eDiscovery, digital forensic and cyber security experience. Recognized by Law Business Research's Who's Who Legal Canada as a leading eDiscovery practitioner in Canada, Chris has extensive experience providing services to a wide range of industries in complex business disputes.



ACEDS EXAM GOES CANADIAN!



The CEDS program has been in operation for the last ten years. ACEDS has now launched an exam and training program designed for Canadians.

Topics include Information Governance, Document Review, Legal Project Management and Cross-Border E-Discovery.

Canadian content is developed by E-Discovery professionals from coast to coast. Materials and study groups are led by Canadian CEDS.

"Taking the course and exam were both gratifying and validating of my profession, while expanding my knowledge on several topics. There was an incredible amount of support and guidance. I highly recommend utilizing the many resources provided by ACEDS, including study groups, training videos, and practice exam."

- Tania Moola

Alexander Holburn Beaudin+ Lang LLP

*Is the ACEDS Certification right for you?
LINK: [Test your E-Discovery IQ](#)*

Member Spotlight - Stephanie Mills

Stephanie Mills has been a law clerk since 2003, working for National law firms in Toronto and Halifax. She has been an eDiscovery & Litigation Case Manager at Cassels for 12 years. She oversees all elements of complex litigation with expertise in franchise law, intellectual property law, and class actions. Stephanie marries creative project management with cutting edge technology to achieve efficient and successful resolutions for her clients. In the last three years, she has had the privilege of attending two different trials, which is quickly becoming her favourite part of the job!

Stephanie completed the ACEDS exam in 2020 - a 6 hour exam answering scenario-based questions on E-Discovery law and application of those laws in the realm of the E-Discovery Reference Model (EDRM) and in 2021 lead a study group for the Canadian BETA ACEDS exam. She is a past contributor to the ACEDS C.A.N. Newsletter and is this edition's Editor in Chief. Thank you for your significant contributions to the Community, Stephanie!





The Ultimate Collaboration: Case Chronologies and E-Discovery Databases

by Ofer Bleiweiss (*Everchron*)

Every case has a story. This story is made up of facts. These facts can be captured in emails or documents. They can arise in response to written discovery requests or in oral testimony. Facts can be reflected in texts or chats (never underestimate the evidentiary weight of a well-placed emoji). They can also be conveyed orally, for example, in a witness interview, or more informally, such as in a meeting or telephone call with a client. Every litigation team needs to understand the story of its case and that means understanding how these key facts unfold.

To capture these stories, lawyers often turn to case chronologies. In the legal context, a chronology is a working document that lays out the facts of a case or investigation in a series of individual entries. Typically, these entries are presented in a linear fashion playing out over time, though there are practices that rely on a claim or issue based structure; these chronologies are not necessarily chronological by their very nature.

The chronology cannot live in the space where the document review is being carried out. It is not sufficient to filter reviewed documents for anything tagged “hot” or “important,” include the word “chronology” in the saved search name and call it a day.

Thus, every e-discovery platform expanding into this space has built or is building a separate tool for chronologies.

E-discovery serves a distinct purpose and litigation teams need another software tool for substantive fact development work. That said, there’s a symbiotic relationship between the case chronology and the e-discovery platform of choice. The subset of reviewed documents tagged “hot” or “important” likely contain many of the key factual building blocks of the chronology. Think of it this way: the e-discovery platform helps find the potential needles in the haystack and the chronology is the place to actually work with those needles.

Whereas e-discovery documents are coded, for responsiveness, privilege and issues, among other things, chronology entries are opinionated. In addition to a factual summary, each entry includes the case team’s opinion of the document: Why is it important and what does it mean for the client and the case? Who from the cast of characters was aware of it, involved in it or otherwise related to it? What issues are associated with the fact and how are the cast of characters impacted by it? Ultimately, the team needs to understand all parts of the story, those that are favorable and those that are not so much.



The mere inclusion of a document in a chronology on its own is meaningful. There is an analytical filter between the e-discovery database and the chronology. When a document makes it through that filter and is included in the chronology, it has met a substantive threshold of criticality to the case. Once a document is in the chronology, it now resides among the other needles. “Hot” for document review purposes does not necessarily translate to “hot” for chronology purposes. The scale of importance shifts at this stage and requires a separate analysis. This is especially the case when the document review is performed by first-level reviewers who are not part of the substantive litigation team.

The chronology is a living document that evolves over the life of a case. It often starts at the outset of a case, well before data is even collected, let alone processed and reviewed. At that point, you have just a few pieces of the puzzle. You are still trying to build out the border, understand the parameters and identify sources for further exploration. Facts get added and updated over time, and some facts are demoted or removed as new information comes to light.

The chronology can inform your review by identifying priority custodians, time periods or other specific points of focus (for example, specific transactions or keywords). The results of the targeted review then make the chronology even more robust, which leads

to more insights and areas of interest for reviewers to spotlight.

This is the ultimate symbiosis between creating a chronology and document review, and a strong impetus for litigation document review teams not to wait until a review is done to begin the chronology.



We recently conducted a survey amongst individuals not currently using Everchron. Two big findings emerged: First, every single respondent indicated that they create a case chronology on every case. Second, 90% of respondents indicated that they use Excel or Word to build these chronologies.

For a task that teams perform on every case and investigation, firms and legal departments need a purpose-built case management tool to ensure effective and collaborative fact development. Just as the legal profession outgrew bankers’ boxes and then Acrobat in favour of e-discovery software, it has now outgrown Word, Excel and similar general purpose tools for building chronologies and conducting case analysis.



Ofer Bleiweiss is the CEO and co-founder of Everchron (<https://everchron.com/>), a legal tech company building collaborative case management software. Prior to forming the company, Ofer was a lawyer at a firm in Los Angeles working on complex litigation matters and investigations.





Preservation Obligations may change with new Auto-Expiration of Teams Meeting Recordings

by Candice Chan-Glasgow (Heuristica Discovery Counsel LLP)

Parties to anticipated litigation should be mindful of announced changes to the auto-expiration of Teams recordings and their preservation obligations once litigation is reasonably anticipated.

In July 2021, Microsoft announced the initial development of a new auto-expiration feature on Microsoft Teams meeting recordings stored on OneDrive and Sharepoint. On January 31, 2022, Microsoft announced that the default auto-expiration period for Teams recordings will increase to 120 days from the previously announced 60 days.

New recordings will be set to automatically expire 120 days after they are recorded if no action is taken. Administrators and Users can choose a different default expiration period (minimum of 1 day, or a maximum of 99,999 days) or set meeting recordings to not expire at all through the Teams admin center.

According to a recent update on the Microsoft roadmap, deployment of this auto-expiration feature is currently delayed until March 2022.

From a general document management or records retention perspective, it is important for organizations to consider whether a 120-day retention period is adequate and defensible. For a retention policy to be reasonable, it must reflect statutory and regulatory obligations, as well as business considerations. Recordings of different types of meetings may also require different retention periods as they will be governed by varying statutory, regulatory, or business requirements.

Note that retention or legal hold policies implemented through the Microsoft 365 compliance center override the Teams auto-expiration feature. This means that if the compliance center setting is longer than the Teams auto-expiration period, the compliance center settings will govern.

From an eDiscovery perspective, this is a significant change from the prior Teams default of maintaining recordings indefinitely.



At Heuristica, Candice is a project manager on legal review projects and assists clients with their eDiscovery project planning in addition to providing quality control guidance to Heuristica's legal review teams. Candice has managed numerous types of files including class action litigation, bankruptcy proceedings, construction litigation and arbitration, commercial litigation, and competition reviews.

Note: This article was first published on the Heuristica Discovery Counsel LLP Insights & Ideas blog February 7, 2022.



We want to hear from you!

Have you written an article or have materials with an educational focus on the topics of E-Discovery?
Contact us to share them with the ACEDS Community.



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